

WP(MD).6979 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.02.2025

PRONOUNCED ON : 19.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

WP(MD)No.6979 of 2021

S.Mayalagu

Petitioner(s)

Vs

1. The Director of Collegiate Education,
E.V.K.Sampath Building, College Road, Chennai - 6.

2. The Principal, V.S.S.Government Arts College,
Poolankurichi, Tirupathur Taluk,
Sivagangai District.

Respondent(s)

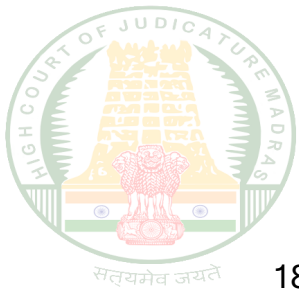
Prayer:- This Writ Petition has been filed, under the Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the 1st Respondent made in Na.Ka.No. 18396/B2/2019, dated 17.10.2019 and to quash the same and consequently, to direct the Respondents to give notional promotion to the Petitioner as a Lab Assistant in the 2nd Respondent College on and from 09.07.2008, with all attended benefits.

For Petitioner(s) : Mr.R.SuriyaNarayanan

For Respondent(s) : Mr.D.Sadiq Raja, Additional Government Pleader

ORDER

1. This Writ Petition has been filed, under the Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the 1st Respondent made in Na.Ka.No.

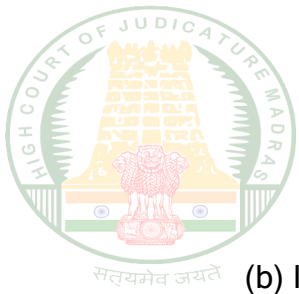


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18396/B2/2019, dated 17.10.2019 and to quash the same and consequently, to direct the Respondents to give notional promotion to the Petitioner as a Lab Assistant in the 2nd Respondent College on and from 09.07.2008, with all attended benefits.

2. The facts of the case, in a nutshell, as set out in the affidavit filed in support of this Writ Petition and led to filing of this Writ Petition and necessary for disposal of the same, are as follows:-

(a) The Petitioner was initially appointed as a Sports Marker in the 2nd Respondent College. Though, as per the proceedings of the 2nd Respondent, dated 27.10.1997, the post of Lab Assistant was to be filled in the ratio of 1:2, with one post filled through the direct recruitment and two posts through promotion, the Petitioner was not considered for the said post, since the Petitioner was imposed with the punishment of stoppage of increment for one year, without cumulative effect from 10.11.2008, pursuant to the disciplinary proceedings initiated against the Petitioner, under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In W.P(MD)No.5463 of 2008, filed by the Petitioner, seeking appointment to the post of Lab Assistant, this Court, by the order dated, 27.03.2013, directed the 2nd Respondent to consider and appoint the Petitioner as a Lab Assistant, if he was otherwise eligible on the ground that the punishment period ended on 10.11.2009 and a vacancy existed. Accordingly, the Petitioner was promoted as a Lab Assistant, by the proceedings, dated 27.05.2013.

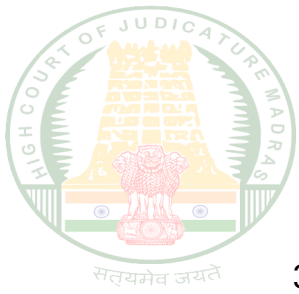


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(b) In the mean time, during the pendency of the said Writ Petition, the 1st Respondent by the proceedings, dated 10.05.2010, reduced the punishment of stoppage of increment for one year without cumulative effect to a Censure, which was not brought to the notice of this Court by the Respondents in the said Writ proceedings. Since the Censure was not a bar to get promotion, the Petitioner submitted a representation dated 27.05.2013, requesting the Respondents to promote him with effect from 09.07.2008, on which date, two, out of three posts, were filled up, viz. one through the direct recruitment and the other by promoting a Record Clerk in the 2nd Respondent's College. His further representations, seeking notional promotion, were dismissed. On 06.05.2019, the Petitioner submitted another representation. However, the 1st Respondent rejected the said representation, by the impugned proceedings in Na.Ka.No.18396/B2/2019, dated 17.10.2019, without any valid reason, but citing paragraph 4 of the order made in W.P(MD)No. 5463 of 2008. Thereafter, the Petitioner retired on 31.10.2019. In such circumstances, this Writ Petition has been filed, seeking the relief, as stated above.

3. In the counter affidavit filed by the 2nd Respondent, it is averred as follows:-

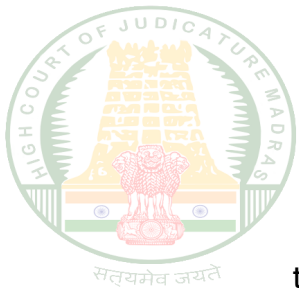
(a) The Petitioner had passed SSLC. The Petitioner was temporarily appointed through the Employment Exchange, as a Marker in the 2nd Respondent College with effect from 19.01.1984. As per the G.O.Ms.No.



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347, Higher Education (G-2) Department, dated 29.09.2006, the services of the Petitioner were regularised. As on 09.07.2008, there were three vacant posts of sanctioned Lab Assistant. The Petitioner had also made applications for promotion as a Lab Assistant on 28.09.2007 and 17.06.2008. The 2nd Respondent, by the proceedings dated, 21.11.2007 and 18.06.2008, stated that in view of the disciplinary proceedings initiated under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal), pending against the Petitioner, his representation could not be considered at that time. The Petitioner was imposed with a punishment of stoppage of increment for one year without cumulative effect.

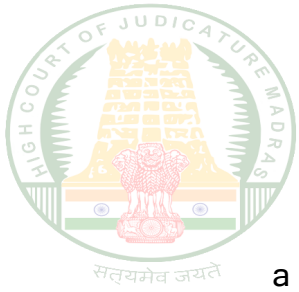
- (b) The Petitioner had filed WP(MD)No.5463 of 2008 to consider him for appointment to the post of Lab Assistant. This Court, in the said Writ Petition, by the order dated, 27.03.2013 had directed the 2nd Respondent to appoint the Petitioner in the post of Lab Assistant, if he was otherwise eligible and subsequently, the Petitioner was appointed in the said post, with effect from 01.6.2013, by the proceedings of the 1st Respondent, in Na.Ka.No.0172/A/13, dated 27.05.2013.
- (c) The representation of the Petitioner, dated 06.05.2019, to give notional promotion from 09.07.2008, instead of 01.06.2013, was rejected by the impugned proceedings, dated 17.10.2019 on the ground that since the Petitioner joined the said post with effect from 01.6.2013 and served as such, his request for consideration of retrospective promotion on par with



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the other two Lab Assistants from 09.07.2008 was not feasible. The Petitioner retired on 31.10.2019 on attaining the age of superannuation. Hence, this Writ Petition is liable to be dismissed.

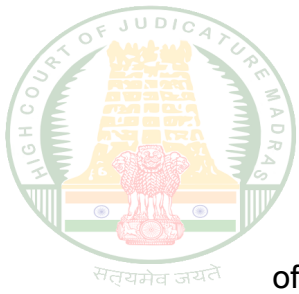
4. This Court heard Mr.R.Suriya Narayanan, the learned counsel for the Petitioner and Mr.D.Sadiq Raja, the learned counsel for the Respondents.
5. The learned counsel for the Petitioner has submitted that since the punishment of stoppage of increment was converted into Censure, by proceedings dated 10.05.2010, the Petitioner was eligible for notional promotion as a Lab Assistant with effect from 09.07.2008, on which date, as two posts, out of three posts were filled up and there was no currency of punishment and hence, the impugned order, dated 17.10.2019, rejecting the representation of the Petitioner, seeking notional promotion with effect from 09.07.2008, is illegal.
6. Per contra, the learned Additional Government Pleader for the Respondents has submitted that pursuant to the order of this Court, dated 27.03.2013, made in WP(MD)No.5463 of 2013 filed by the Petitioner, seeking for a Writ of Mandamus, directing the 4th Respondent therein, who is the 2nd Respondent herein, to consider the Petitioner for appointment in the post of Lab Assistant, the Petitioner was appointed in the said post with effect from 01.06.2013 and he served in the said post till the date of his retirement on 31.10.2019. The learned Additional Government Pleader would further submit that after serving for five years in the said post, in the year 2019, when he was about to retire, he made



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a representation on 06.05.2019, seeking retrospective notional promotion with effect from 09.07.2008 and that the Petitioner retired on 31.03.2019 and thereafter, he also received all retirement benefits and that even this Writ Petition has been filed belatedly after two years of his retirement and hence, at this belated stage, the claim of the Petitioner for retrospective notional promotion and its consequential retirement benefits is not feasible, as it is a time barred one and hence, this Writ Petition is liable to be dismissed on the ground of laches.

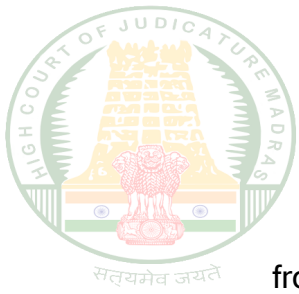
7. I have given my careful and anxious consideration to the contentions put forward by the learned counsel on either side and also perused the entire materials available on record.
8. The Petitioner, who was initially appointed as a Sports Marker in the 2nd Respondent College, had applied for promotion to the post of Lab Assistant, which was to be filled in the ratio of 1:2, with one post filled through the direct recruitment and two posts through promotion. It is not in dispute that the Petitioner was eligible to the said post. However, the Petitioner was not considered for the said post on the ground that the Petitioner was imposed with punishment of stoppage of increment for one year without cumulative effect from 10.11.2008, in view of the disciplinary proceedings pending against the Petitioner under Rule 17(a) of the Tamil Civil Services (Discipline and Appeal) Rules at that time.
9. It is also not in dispute that in W.P(MD)No.5463 of 2008, filed by the Petitioner, seeking to appoint him in the post of Lab Assistant, by the order



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of this Court, dated, 27.03.2013, the Petitioner was directed to be appointed in the said post and accordingly, the Petitioner was promoted as a Lab Assistant, by the order dated 27.05.2013, with effect from 01.06.2013.

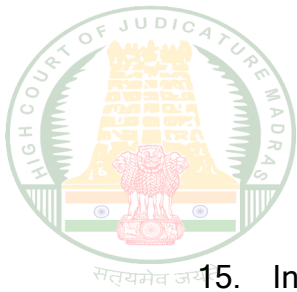
10. In the mean time, since the said punishment was reduced into Censure, by the proceedings, dated 10.05.2010, the Petitioner again made a representation on 27.05.2013, requesting the Respondents to promote him retrospectively with effect from 09.07.2008, on which date, two out of three posts were filled up. Thereafter, the Petitioner remained silent for more than five years and the Petitioner served in the said post till the date of his retirement on 31.10.2019 and after his retirement, he also received all retirement benefits. Just five months before his retirement, he made a representation dated 06.05.2019, seeking notional promotion with effect from 09.07.2008.
11. Thus, it is clear that pursuant to the orders of this Court, dated 27.03.2013, after serving in the post of Lab Assistant with effect from 01.06.2013 for more than five years, the said representation of the Petitioner, dated 06.05.2019 was belatedly made just five months before his retirement on 31.10.2019 and that the Petitioner filed the present Writ Petition for the relief claimed on 24.03.2021 almost two years after his retirement from service.
12. The impugned order was passed, rejecting the claim of the Petitioner for notional promotion and its consequential monetary benefits with effect



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from 09.07.2008 on the ground that since the Petitioner served as the Lab Assistant with effect from 01.06.2013, the said claim of the Petitioner cannot be acceded to, which, in the opinion of this Court, is in order, as this Court finds no illegality in the same.

13. After perusal of the records, this court finds that there is no proper and satisfactory explanation for giving such a belated representation and also filing the present Writ Petition almost two years after his retirement. Hence, the Petitioner's claim for retrospective promotion and its consequential retirement benefits is a time barred one and at this belated stage, it cannot be sustained on the ground of laches.
14. The expression "sufficient cause" and satisfactory explanation has been held to receive a liberal construction so as to advance substantial justice and generally a delay in preferring a petition may be condoned in interest of justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to parties, seeking condonation of delay. In the case of **Collector, Land Acquisition Vs. Katiji**, reported in 1987(2) SCC 107, the Honourable Supreme Court said that when substantial justice and technical considerations are taken against each other, cause of substantial justice deserves to be preferred, for, the other side cannot claim to have vested right in injustice being done because of a non deliberate delay. The Court further said that judiciary is respected not on account of its power to legalise injustice on technical grounds, but because it is capable of removing injustice and is expected to do so.

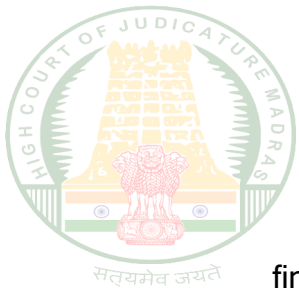


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15. In the case of **P.K. Ramachandran Vs. State of Kerala**, reported in AIR 1998 SC 2276, the Honourable Supreme Court was pleased to observe as under:-

“Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds.”

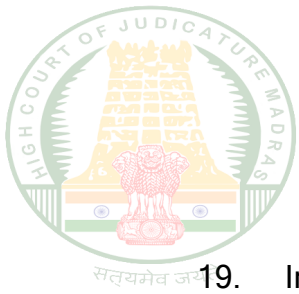
16. The Rules of limitation are not meant to destroy rights of parties. They virtually take away the remedy. They are meant with the objective that parties should not resort to dilatory tactics and sleep over their rights. They must seek remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The statute relating to limitation determines a life span for such legal remedy for redress of the legal injury, one has suffered. Time is precious and the wasted time would never revisit. During efflux of time, newer causes would come up, necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The statute providing limitation is founded on public policy. It is enshrined in the maxim ***Interest reipublicae up sit finis litium*** (it is for the general welfare that a period be put to litigation). It is for this reason that when an action becomes barred by time, the Court should be slow to ignore delay for the reason that once limitation expires, other party matures his rights on the subject with attainment of



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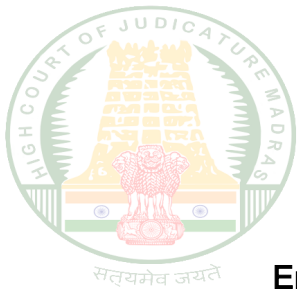
finality. Though it cannot be doubted that refusal to condone delay would result in foreclosing the suiter from putting forth his cause but simultaneously the party on the other hand is also entitled to sit and feel carefree after a particular length of time, getting relieved from persistent and continued litigation.

17. There is no presumption that delay in approaching the Court is always deliberate. No person gains from deliberate delaying a matter by not resorting to take appropriate legal remedy within time but then the words “sufficient cause” show that delay, if any, occurred, should not be deliberate, negligent and due to casual approach of concerned litigant, but, it should be bona fide, and, for the reasons beyond his control, and, in any case should not lack bona fide. If the explanation does not smack of lack of bona fide, the Court should show due consideration to the suiter, but, when there is apparent casual approach on the part of suiter, the approach of Court is also bound to change. Lapse on the part of litigant in approaching Court within time is understandable but a total inaction for long period of delay without any explanation whatsoever and that too in absence of showing any sincere attempt on the part of suiter, would add to his negligence, and would be relevant factor going against him.
18. I need not to burden this judgment with a catena of decisions explaining and laying down as to what should be the approach of Court on construing “sufficient cause” and it would be suffice to refer a very few of them besides those already referred.



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19. In the case of **Shakuntala Devi Jain Vs. Kuntal Kumari, reported, AIR 1969 SC 575**, a three Judge Bench of the Court said that unless want of bona fide of such inaction or negligence as would deprive a party of the protection, the application must not be thrown out or any delay cannot be refused to be condoned.
20. The Privy Council, in the case of **Brij Indar Singh Vs. Kanshi Ram reported in ILR (1918) 45 Cal 94**, observed that true guide for a court to exercise the discretion is whether the appellant acted with reasonable diligence in prosecuting the appeal. This principle still holds good inasmuch as the aforesaid decision of Privy Council as repeatedly been referred to, and, recently in **State of Nagaland Vs. Lipok AO and others, AIR 2005 SC 2191**.
21. In the case of **Vedabai @ Vijayanatabai Baburao Vs. Shantaram Baburao Patil and others, reported in JT 2001 (5) SC 608**, the Court said that under Section 5 of the Act, 1963, it should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. In the former case consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard and the basic guiding factor is advancement of substantial justice.
22. In the case of **Pundlik Jalam Patil (dead) by LRS. Vs. Executive**



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Engineer, Jalgaon Medium Project and Another, reported in (2008) 17

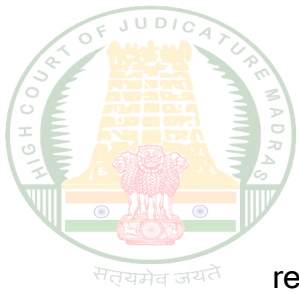
SCC 448, in para 17 of the judgment, the Court said :-

“...The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and state claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and “do not slumber over their rights.”

23. In the case of **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, reported in 2012 (5) SCC 157**, in para 18 of the judgment, the Court said as under:-

“What needs to be emphasized is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bonafides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.”

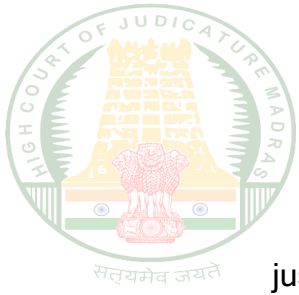
24. In my view, the kind of explanation rendered herein does not satisfy the observations of the Honourable Supreme Court that if delay has occurred for reasons, which does not smack of mala fide, the Court should be



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reluctant to refuse condonation. On the contrary, I find that here is a case, which shows complete careless and reckless long delay on the part of the Petitioner, which has remain virtually unexplained at all. Therefore, I do not find any reason to exercise my judicial discretion exercising judiciously so as to justify the condonation of delay in the present case.

25. Seeking retrospective promotion and its consequential benefits, at this stage is highly belated and lacks justification. Even on merits, pursuant to the order of this Court passed in the earlier Writ Petition filed by the Petitioner, after he was appointed in the post of Lab Assistant with effect from 01.06.2013, the Petitioner kept quiet for more than five years, without making any request for claiming notional promotion, thereby meaning that the Petitioner accepted the said post with effect from 01.06.2013. The Petitioner also received the retirement benefits after his retirement on 31.10.2019. Further, this Court observed that after serving more than five years in the said post, in the year 2019, when the Petitioner was about to retire, he made the representation on 06.05.2019, seeking retrospective notional promotion with effect from 09.07.2008, but the same was rejected by the impugned order, dated 17.10.2019, giving reasons for not entitlement of his claim and to give him notional promotion, since the Petitioner joined in the said post with effect from 01.06.2013 and served as such, his request for consideration of retrospective promotion on par with the other two Lab Assistants from 09.07.2008 was not feasible. Thus, this Court does not find any



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justification to interfere with the impugned order, dated 17.10.2019.

Therefore, there is no merits whatsoever in this Writ Petition. Accordingly, the Petitioner's claim for retrospective promotion and its consequential retirement benefits is untenable for want of merits and on the ground of laches. Accordingly, this Writ Petition is liable to be dismissed.

26. In the result, in the light of the above said observations and discussions made above and in the light of the decisions referred to above, this Writ Petition is dismissed, as devoid of merits. There is no order as to costs.

19.02.2025

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
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To

1. The Director of Collegiate Education, E.V.K.Sampath Building, College Road, Chennai - 6.
2. The Principal, V.S.S.Government Arts College, Poolankurichi, Tirupathur Taluk, Sivagangai District.



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SHAMIM AHMED, J.

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Pre-Delivery Order in
WP(MD)No.6979 of 2021

19.02.2025